IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL WRIT PETITION NO.127 OF 2007
WITH
CRIMINAL WRIT PETITION NO.128 OF 2007
WITH
CRIMINAL WRIT PETITION NO.129 OF 2007
WITH
CRIMINAL WRIT PETITION NO.130 OF 2007
WITH
CRIMINAL WRIT PETITION NO.131 OF 2007

Mr.Shahnavaz Ahamed Beebibag Kothikulam ...Petitioner.
V/s.
State of Maharashtra ...Respondent.

WITH
CRIMINAL WRIT PETITION NO.128 OF 2007

Mohd. Haneef Kerpala Ali ..Petitioner.
V/s.
State of Maharashtra ..Respondent.

WITH
CRIMINAL WRIT PETITION NO.129 OF 2007

Muhammed Rafeeq Mohamood ..Petitioner.
V/s.
The State of Maharashtra ..Respondent.

WITH
CRIMINAL WRIT PETITION NO.130 OF 2007

Sameer Virmangalam ..Petitioner.
V/s.
The State of Maharashtra ..Respondent.

WITH
CRIMINAL WRIT PETITION NO.131 OF 2007

Mahammad Shareef Mahammad ..Petitioner.
V/s.
The State of Maharashtra ..Respondent.

Shri Subhash Zha, adv. for the Petitioner.
Shri D.P.Adsule, APP for the Respondent/State.

CORAM: J.H.BHATIA, J.
DATE : 19th April, 2007.

P.C.:

1. Heard Mr.Zha the learned counsel for the petitioners and Mr.Adsule, the learned APP for the State.

2. To state in brief, the petitioner in writ petition no.127 of 2007 was to travel to Dubai by flight no.EK 501 on 14-12-2006 and the petitioners in remaining four writ petitions were to travel to Sharjah by flight no.IC 681 on 14-12-2006 from Bombay airport. For that purpose protector of immigration had made necessary endorsements on their tickets. However, they were trying to board some other flights when their tickets and passports were checked. It was revealed that on the tickets there was unauthorised interpolation whereby flight numbers had changed. In view of this, all the five petitioners were detained and report was lodged by one Jayant S. Shinde against the present 5 petitioners and 3 others. Their passports and tickets were also detained. Later on, the petitioners filed application before the Metropolitan Magistrate , 22nd Court, Andheri for return of their tickets and passports. The learned Metropolitan Magistrate directed to return the tickets

by an order dated 15-1-2007 in view of the consent given by the Investigating Officer but refused to return the passports therefore, petitioners have filed these writ petitions challenging the order of Metropolitan Magistrate and seeking direction to quash the said order to the extent of refusal to return the passports.

3. It appears that the alleged offences against the petitioners fall under Sections 24(c) and (d) of the Emigration Act, 1983. The offence is punishable with imprisonment, which may extend to two years and with fine, which may extend to Rs.2,000/-. Mr.Zha pointed out that under Section 27 of the Emigration Act, no prosecution shall be instituted against any person in respect of any offence under this act without the previous sanction of the Central Government or such officer or authority as may be authorised by that government by an order in writing in this behalf. Admittedly, so far no sanction has been obtained under Section 27. It is not the case of the State that the petitioners are required in any serious offence. It is the contention of the petitioners that there are semi literates and semi skilled workers and they were going to Sharjah and Dubai to work as labourers or drivers, etc. The travel agent had made the alterations without their knowledge. Whether the defence is acceptable or

not, that can be considered as and when the petitioners are required to face the trial. Admittedly, so far no chargesheet is filed against the petitioners though period of four months has been passed. Petitioner in Writ Petition No.129 of 2006 is from Kerala while all other petitioners are from Karnataka as per the addresses given in the writ petitions. According to the learned counsel for the petitioners, for want of the passports, these persons are likely to be put to a great difficulty in securing jobs abroad and they will be required to come to Bombay repeatedly for collecting their passports or for getting orders.

4. In view of this Mr.Zha made a statement that the petitioners will give undertaking that as and when required, the passports shall be produced before the Trial Court. After some discussion at bar, I find that passports may be returned to the petitioners subject to certain conditions.

5. Therefore, Writ Petitions are allowed with the direction that after taking photocopies of the passports of the petitioners , the same be returned to the petitioners. Panchanama of return of such passports to the petitioners be prepared on which endorsement in writing or under signature of the petitioners may be

taken. The Investigation Officer shall inform the concerned passport/emigration authority about pendency of the cases against the petitioners so that they may take note of it, if necessary as and when the petitioners seek to travel abroad. Petitioners shall produce the original passports before the trial Court as and when required.

(J.H.Bhatia,J.)